

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

LARRY T. KELLEY,)
Petitioner,)
v.) No. 1:03-cv-91
DAVID MILLS, WARDEN,) Edgar
Respondent.)

JUDGMENT

For the reasons expressed in the Court's memorandum filed herewith, it is hereby

ORDERED:

- (1) The petition of Larry T. Kelley ("Kelley") for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED** [Court File No. 1];
- (2) The respondent's motion to dismiss is **GRANTED** [Court File No. 5].

Additionally, the Court has reviewed this case pursuant to 28 U.S.C. § 1915(a)(3) and Rule 24 of the Federal rules of Appellate Procedure and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, any application by Kelley for leave to proceed in forma pauperis on appeal is **DENIED**. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24.

If any appeal is taken from this action, such notice will be treated as an application for a certificate of appealability, which is hereby **DENIED** since Kelley has failed to make a substantial showing of the denial of a constitutional right, Rule 22(b) of the FEDERAL RULES OF APPELLATE PROCEDURE, and has failed to demonstrate reasonable jurists would debate the correctness of the Court's ruling. *See Miller-El v. Cockrell*, 537 U.S. 322, 327, 336 (2003); *Slack v. McDaniel*, 529

U.S. 473, 484 (2000); 28 U.S.C. § 2253(c)(2).

ENTER this *27th day of September, 2005*.

/s/ R. Allan Edgar
R. ALLAN EDGAR
CHIEF UNITED STATES DISTRICT JUDGE